

REMARKS

The present Amendment responds to the Office Action dated November 30, 2006 having a shortened statutory period for response set to expire February 28, 2007. Filed concurrently herewith is a request for a three (3) month extension of time to respond, making the present Amendment due by May 30, 2007.

In the Office Action, claims 1-4 and 6-12 are pending. Applicants note that the Examiner continues to maintain her position that the claims appear to be novel and nonobvious over the art made of record thus far. In particular, in the previous Office Action, the Examiner stated that the closest reference made of record thus far is US Patent No. 4,801,592 and further that this reference "does not teach nor suggests the compounds containing a halo substituent as in present invention." (OA, p. 3). In the present Office Action, the Examiner stated that the claimed compounds differ from "Badawnwh et al. and Ferrarini et al. "in having one naphthydrine ring completely unsubstituted wherein the reference it is always occupied by at least one group for example OH." (OA, p. 11). The Examiner goes on to state that "Armitage et al., WO 93/13097 and Collins et al., WO 92/07468 differs in having different substituents on naphthydrine ring."

However, the Examiner did reject the claims under 35 U.S.C. 112. Specifically, claims 1-4 and 6-12 were rejected under 35 U.S.C. 112, second paragraph as "being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention." (OA, p. 4). The Examiner has requested that Applicant "explain the meaning of 'moiety' in the definition of R5 and R6 in claim 1." In response, Applicants state that "moiety" corresponds to the designation of a partial structure, such as a part of a molecule.

The remaining outstanding rejection of the claims in the Office Action is made pursuant to 35 U.S.C. 112, first paragraph. Here, the Examiner takes the position that the specification is enabling to certain compositions and their method of use, but is not enabling "for all the compounds, composition and their method of use as presently claimed." The Examiner appears to offer a general overview of various case law pertaining to enablement. However, the only specific comment pertaining to the present claims appears on page 5 and 6 of the Office Action wherein the Examiner cites both the Armitage et al. and Collins et al. references in support of the position that this area of art is unpredictable. Applicants respectfully submit that the Examiner's general allegation, without more, does not satisfy the initial burden of presenting by a *preponderance of evidence* why one skilled in the art would not be able to make and use the invention as claimed. Accordingly, the burden has not shifted to Applicants to demonstrate that the disclosure is enabling for the subject matter of each of the pending claims and the rejection is improper.

Notwithstanding Applicants position in this regard, the Examiner will note that the claims have been amended such that they are now narrower in scope than originally presented. The compounds and compositions presently claimed are supported in the present specification and, specifically, data relating to the preparation, characterization, and examples are provided in the specification. Applicants submit that the present specification complies with 35 U.S.C § 112, first paragraph because it is sufficient to inform those skilled in the art how to both make and use the claimed invention without undue experimentation.

Based upon the foregoing then, the Examiner is courteously solicited to pass this application on to allowance. No other fees are believed to be payable at this time. However, the Commissioner is authorized to debit any applicable fees from the deposit account of the undersigned, no 50-1676 in the name of Syngenta Crop Protection, Inc.

Respectfully submitted,

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